

MAINE STATE LEGISLATURE

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L.D. 1467

(Filing No. S- 239)

**STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 532, L.D. 1467, Bill, "An Act to Facilitate the Expeditious Resolution of Certain Superior Court Cases"

Amend the bill by inserting after the title and before the enacting clause the following:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Law Court has recently decided that a party to a forcible entry and detainer action, an eviction action, has a constitutional right to a de novo trial by jury on appeal to the Superior Court after an initial judgment has been rendered by the District Court; and

Whereas, this newly recognized constitutional right to a jury trial could add substantially to the time and complexity inherent in resolving disputes between landlords and tenants and could add considerably to the costs of the parties and the court system involved with forcible entry and detainer actions; and

Whereas, there were over 3,000 forcible entry and detainer actions handled last year by the District Courts; and

Whereas, there are at present no statutes and no rules of court prescribing how the Superior Court should entertain these appeals and protect the rights of the parties during the pendency of an appeal; and

Whereas, principles of justice require that the constitutional right to a jury trial be provided without undue harm to the rights of the appellee and without undue disturbance of the balance of rights current law has struck between landlords and tenants; and

COMMITTEE AMENDMENT "A" to S.P. 532, L.D. 1467

1 Law Court's recent decision in North School Congregate Housing v.
2 Merrithew, Law Docket No. Cum-88-332, decided May 19, 1989. In
3 that case the Law Court ruled that parties to an eviction action
4 have a constitutional right to a jury trial de novo on appeal to
5 the Superior Court after an initial judgment has been entered by
6 the District Court.

7
8 The amendment makes the bill an emergency measure effective
9 upon approval to avoid a period of uncertainty as to the rights
10 of parties to an eviction action and the costs that uncertainty
11 would engender for all concerned.

12
13 The amendment requires the Superior Court to condition its
14 stay of a writ of possession during the pendency of the appeal on
15 the tenant's payment into escrow of current rent. In other
16 words, a tenant who appeals must pay the rent as it comes due
17 into escrow until the dispute is resolved.

18
19 The amendment removes provisions in the bill which
20 conditioned a tenant's right to a jury trial on appeal to payment
21 into escrow of back rent and other damages in controversy.

22
23 The amendment also allows the Superior Court, in appropriate
24 cases, to condition stay of the writ of possession on the
25 defendant's agreement not to damage the premises or create a
26 nuisance. The amendment requires the court to vacate the stay,
27 in which case the defendant must leave the premises, if the
28 conditions of the stay are violated.

29
30 The amendment empowers the Superior Court to authorize
31 payments from the escrow account to meet appropriate expenses,
32 such as mortgage payments and heat and utility charges, related
33 to the premises.

34
35 The amendment removes a provision in the bill which would
36 allow the prevailing party to ask the court for a ruling that the
37 appeal was frivolous and an order that the appellant pay the
38 prevailing party's court costs and attorney's fees. Rule 11 of
39 the Maine Rules of Civil Procedure provides suitable safeguards,
40 in the form of sanctions against attorneys, against frivolous
41 appeals.

42
43 The amendment also removes provisions conditioning the right
44 to a jury trial on the filing of affidavits and a statement of
45 the basis for the appeal with the notice of appeal. It is
46 anticipated that the Supreme Judicial Court will promptly
47 promulgate procedural rules governing, among other things, the
48 types of pleadings to be filed in these appeals.

49
50 The amendment removes the ambiguous requirement in current
51 law that requires a plaintiff who appeals "recognize" to the
52 defendant as provided by the Maine Revised Statutes, Title 14,
53 section 6006.

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Finally, the amendment provides that the Supreme Judicial Court shall promulgate rules necessary for the prosecution of these appeals.

Reported by Senator Matthews for the Committee on Legal Affairs. Reproduced and Distributed Pursuant to Senate Rule 12.

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